June 20, 2003

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

RE: Cambridge Electric Light Company, Commonwealth Electric Company, Boston Edison Company, NSTAR Gas Company, d/b/a NSTAR, D.T.E 03 – 47

Dear Secretary Cottrell:

On June 12, 2003, NSTAR ("Company") filed its Opposition to the Attorney General's Motion to Dismiss the Company's petition with the Department of Telecommunications and Energy ("Department"). The majority of the Company's Opposition addresses the legal merits of NSTAR's request to create a new reconciling mechanism to recover an increase in expenses for pension and post-retirement benefits other than pensions ("PBOP").[1] The Company devoted little attention to explaining why the Department should not dismiss its case under relevant precedent. The Supreme Judicial Court, however, has addressed the issue of the appropriate method for the review of an automatic cost adjustment mechanism like the one presented by the Company. *Consumers Organization for Fair Energy Equality, Inc. v. Department of Public Utilities*, 368 Mass. 599, 606-607 (1975) (fuel clause). The examination of a new reconciling cost adjustment mechanism best occurs within the context of a rate proceeding under G. L. c. 164, §94. *Id*. Since the Company has not filed a rate case, the Department should dismiss the petition.

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[1] The Company prematurely addresses the legal justification for its request to the Department in response to the Motion to Dismiss. While it is not appropriate at this point to argue at length the merits of the Company's request, the Attorney General challenges a legal basis for the Company's proposal since it conflicts with established Department precedent. *Fitchburg Gas and Electric Light Company*, D.T.E. 02-24 / 02-25, pp. 111, 115 (2002) ("[t]he Department's General policy with respect to pension expense is to limit rate recovery to test year cash contributions to the pension plan because accrual-based pension cost estimates generally cannot be shown to be annually or periodically recurring")("[t]he Department has found that the actual cash contribution to a tax-deductible trust strikes a balance of interests between shareholders and ratepayers").

According to the Supreme Judicial Court, the Department should conduct a rate proceeding under G. L. c. 164, §94, when creating a new automatic cost adjustment mechanism:

> If we have stated correctly the conventional rationale for the appearance of cost adjustment clauses in rate schedules, it would seem incongruous to subject fluctuations of charges to consumers under these clauses to rate proceeding under such a statute as s 94; the clauses were designed precisely to avoid those proceedings *except where changes were being proposed in the clauses themselves.*

Consumers Organization for Fair Energy Equality, Inc. v. Department of Public Utilities, 368 Mass. at 606-607 (emphasis added). ["A] proposal that an adjustment clause be added to a schedule" similarly should be addressed in the context of a rate proceeding. *Id*. at 606. During a proceeding, the Department should have the full opportunity "to hear and consider all evidence pertinent to the issue of what would be a just and reasonable rate for [energy] to the consumer." *Boston Consolidated Gas Co. v. Department of Public Utilities*, 321 Mass. 259, 266-268 (1947) (Department could not reduce rates to customers by altering fuel cost adjustment clause outside the context of a rate proceeding under G. L. c. 164 §§93 or 94); *Worcester Gas Light Company*, 9 PUR 3d 152, 156 (1955) (Company must show insufficient earnings before Department will establish cost adjustment mechanism to automatically raise rates). This type of review is especially important when the cost adjustment mechanism, like the one proposed by the Company, raises rates to customers.

Filing a request for review of a new reconciling cost adjustment mechanism under the circumstances of this case should trigger a general rate investigation under G. L. c. 164, §94. The Company's petition does not contain the bare minimum of basic information necessary to support such an investigation even under the most favorable reading of the facts alleged in the petition. Consequently, the Department should dismiss the Company's petition.

Sincerely,

Alexander J. Cochis
Assistant Attorney General

cc: Service list